dpd MEMPHIS AND SHELBY COUNTY STAFF REPORT

CASE NUMBER: ZTA 20-1 **L.U.C.B. MEETING:** Nov. 12, 2020

APPLICANT: Memphis and Shelby County Division of Planning and Development

REPRESENTATIVE: Josh Whitehead, Zoning Administrator

REQUEST: Adopt Amendments to the Memphis and Shelby County Unified Development Code (the "UDC")

EXECUTIVE SUMMARY

1. Listed below are the more significant amendments associated with this zoning text amendment, or "ZTA." All other items are explained in greater detail in the staff report. Proposed new language is indicated in **bold, underline** while proposed deletions are indicated in ~~strikethrough~~. All changes are reflected in yellow highlights to show context in a copy of the complete UDC linked here.
2. Item 3, as numbered in this staff report, primarily proposes to change two terms found throughout the Code: "Planning Director" and the "Office of Planning and Development," or "OPD." The latter was created in 1976, but ever since the Division of Planning and Development ("DPD") was formed in 1986 to encompass OPD, the Office of Construction Code Enforcement and others, there has been confusion over the department known as OPD and the nearly identically-named division known as DPD. This zoning text amendment proposes to change all references of OPD to DPD and change the name of the head of the now-renamed OPD who administers the UDC from "Planning Director" to "Zoning Administrator."
3. Item 4 will include the Memphis 3.0 General Plan in the list of plans to be consulted when an application is filed pursuant to the Code, as well as a reference to the consistency section of the Tennessee Code Annotated.
4. Item 8 will require the issuance of a Special Use Permit from the Memphis City Council or Shelby County Board of Commissioners for new gas stations in the least intensive commercial zoning district, CMU-1.
5. Item 17 will differentiate between establishments selling new and used tires; since the latter are often associated with vehicle repair shops, they will be grouped with them in the use chart. This will require the issuance of a Special Use Permit for used tire sales in the CMU-1 and CMU-2 districts.
6. Item 22 will increase the number of flag lots that are allowed to adjoin each other from one to two.
7. Item 34 will prohibit parking on grass in residential zoning districts, a regulation found in the Memphis Housing Maintenance Ordinance but not currently in effect in unincorporated Shelby County.
8. Item 47 codifies current interpretations of the Code with regard to billboard placement and splaying.
9. Item 53 will allow Planned Developments in the Uptown Special Purpose, Medical Overlay and University Overlay Districts in an effort to prevent the need of an applicant to file simultaneous requests for a subdivision and variance. Similarly, Item 59 articulates applications filed with the Board of Adjustment to prevent the need of an applicant to file simultaneous requests for a special exception, conditional use permit and/or variance.
10. Item 67 articulates a process by which Special Use Permits and Planned Developments may be revoked by the Memphis City Council or Shelby County Board of Commissioners.
11. Item 75 adds clarity to the definitions of boarding and rooming houses to assist in the effective citation of these uses.

RECOMMENDATION: ***Approval***

Staff Writer: ***Josh Whitehead*** **E-mail:** ***josh.whitehead@memphistn.gov***

Proposed language is indicated in **bold, underline**; deleted language is indicated in ~~strikethrough~~.

1. Front Cover: approval dates

   Approval dates of the Land Use Control Board are being added to the cover page of the Code, as well as ordinance numbers of two additional text amendments not already included.

2. Table of Contents

   10.10: **E**xception for Historic Multi-Family Properties (capitalize first letter)

3. Throughout the Code, and particularly 12.3.1: "Planning Director" and "Office of Planning and Development"

   The UDC re-introduced the term "planning director" to the local planning lexicon when it was adopted in 2010. Historically, the head of the Office of Planning and Development ("OPD") has interchangeably been called a "Director," an "Administrator" and/or a "Planning Director." OPD's predecessor organization, the Memphis and Shelby County Planning Commission, was headed by a "director" from 1956 to 1976. Before that, from 1922 to 1956, the local planning department was primarily staffed by one individual, who went by the title "Engineer-Secretary." Organizationally, the Office of Planning and Development is confusingly a department of the similarly-named *Division* of Planning and Development ("DPD"), which, as is the case with other divisions within the City and County governments, is headed by a Director. To add to the confusion, when the Division was created in 1986 as an umbrella organization that contained the newly created Office of Construction Code Enforcement and the then-ten-year old Office of Planning and Development, the latter was not given a distinct name.

   The Division is currently undergoing a re-organization that will, in part, place more zoning activities under the department formerly known as the Office of Planning and Development, namely zoning enforcement and sign permitting. To help eliminate the confusion between OPD and DPD, the former will be known as the Division of Planning and Development – Land Use and Development Services. Since a department solely focused on long range planning has been created, the Office of Comprehensive Planning, the term "Planning Director" has become outmoded for the administrator of this department. As is the case in many jurisdictions, the person who is empowered to interpret and administer the zoning code is known as the Zoning Administrator. This proposal will change all references found throughout the Code of "Planning Director" to "Zoning Administrator," including the procedural flow charts found in Article 9.

   This proposal will also change references made to the "Office of Planning and Development" to the "*Division* of Planning and Development." The reorganization of the Division will place sign permits under the downtown offices of the Division. This will involve changing references in 9.17 and, Chapter 4.9 made of the "Building Official" to the "Zoning Administrator." Finally, the flow chart in Chapter 9.20 is being changed to reflect the duty of writing Written Interpretations of the Code falling on the Zoning Administrator (a change made to the balance of that Chapter with ZTA 18-1).

4. 1.9 (and Table of Contents for this Chapter): Consistency with Memphis 3.0 and references to the Major Road Plan

On February 14, 2019, the Land Use Control Board approved Memphis 3.0 as the first General Plan for the physical development of the City, the first citywide long-range plan in nearly 40 years. On December 3, 2019, the Memphis City Council Adopted the plan. As such, the Unified Development Code needs to reflect a key aspect of Memphis 3.0: consistency with its Future Land Use Planning Map. In 2010, the Tennessee General Assembly passed Public Acts Chapter 648 (SB2576/HB2709), which required the state's municipal subunits to adhere to General Plans that they have adopted when they review land use decisions. This is codified into the Tennessee Code as TCA 13-4-202(b)(2)(B)(iii):

> Prior to the adoption of the general plan, a legislative body shall hold a public hearing thereon, the time and place of which shall be published in a newspaper of general circulation in the municipality at least thirty (30) days prior to the legislative body's meeting in which the adoption or amendment is to be first considered. ***After the adoption of the general plan by a legislative body, any land use decisions thereafter made by that legislative body, the respective planning commission or board of zoning appeals when the board of zoning appeals is exercising its powers on matters other than variances, must be consistent with the plan.*** The general plan may be adopted as an element of the jurisdiction's growth plan through the process established in title 6, chapter 58, but if the general plan is not adopted as part of the growth plan, it nevertheless cannot be inconsistent with the growth plan or the intent of title 6, chapter 58 (emphasis added).

With the adoption of this legislation, Tennessee joined many other states that require consistency between planning and zoning; that is, changes to the latter must respect the former. However, Tennessee law does not mandate adoption of a general plan, so it remains known as a unitary state where its comprehensive zoning map can act as a comprehensive plan. Memphis 3.0 was the first general, or comprehensive, plan for the city since the relatively new Land Use Control Board and subsequently Memphis City Council and Shelby County Board of Commissioners adopted the Memphis 2000 Policy Plan in 1981. Since its adoption more than a year ago, Memphis 3.0 has been used, in part, as a guide for OPD's review of individual land use applications. Decisions within the City of Memphis.

The language below will reference TCA 13-4-202(b)(2)(B)(iii) in a new Sub-Section 1.9A, reference the Memphis 3.0 General Plan to guide consistency in a new Sub-Section 1.9B, explicitly state that Memphis 3.0 does not replace the required findings of fact for individual land use decisions found elsewhere in the Code in a new Sub-Section 1.9C and include all of the current list of neighborhood plans approved by the Memphis City Council and Shelby County Board of Commissioners found in this section as a new Sub-Section 1.9D:

1.9 CONSISTENCY WITH MEMPHIS 3.0 AND OTHER PLANS TO BE CONSIDERED

A. All land use decisions pursuant to TCA 13-4-202(b)(2)(B)(iii) shall be consistent with the Memphis 3.0 General Plan.

B. Determination of Consistency.
When making land use decisions, the boards and bodies responsible for making such decisions shall consider the decision criteria described in the Memphis 3.0 General Plan in its determination of consistency.

C. Memphis 3.0 and this Code
The Memphis 3.0 General Plan shall be used to guide land use decisions but not in any way supplant the regulations of this Code, including but not limited to its Zoning Map or Overlay Districts. A determination of consistency with Memphis 3.0 shall not supersede the approval criteria and findings of fact required for individual land use decisions, as provided in this Code.

D. The following plans shall be considered in any decisions under this development code…

5. 1.12: Remove spaces

Throughout the Code, there is no space between the capital letter of a Sub-Section and the Arabic number of a Paragraph; this lack of a space should be reflected in Chapter 1.12 of the Code that covers its numbering:

Paragraph 3.1.1A(1) [Example Text]
Item 3.1.1A(1)(a) [Example Text]
Sub-Item 3.1.1A(1)(a)(1) [Example Text]

6. 2.2.3C(2), 2.2.3C(3), 2.9.2A, 8.2.9F, 8.3.12F and 12.3.1: Upper-story residential

The Code uses both the term “upper story residential” and “upper-story residential” (note the hyphen in the latter). This proposal will alter Paragraph 2.2.3C(2), Paragraph 2.2.3C(3), Sub-Section 2.9.2A and Section 12.3.1 to contain a hyphen. On a separate matter, the definition of this term in Section 12.3.1 does not match the definitions in Sub-Sections 8.2.9F and 8.3.12F, which were written at a previous time before the UDC was completed. As such, the following two amendments are proposed to universalize the term “upper-story residential” throughout the Code:

8.2.9F Upper-Story Residential. **See definition in Section 12.3.1.** ~~A residential unit on the upper floors of a permitted nonresidential use.~~

8.3.12F: Upper-Story Residential – **See definition in Section 12.3.1.** ~~A residential unit on the upper floors of a permitted nonresidential use.~~

7. 2.4.1, 9.2.2, 9.3.3, 9.3.4A and 9.5.12: Floodway and floodplain overlay

The Floodway zoning district and the Floodplain Overlay is determined by the Federal Emergency Management Agency ("FEMA") through their Flood Insurance Rate Maps ("FIRMs"). The Floodway zoning district ("FW") typically follows the major waterways in the community and prohibits all construction and the Floodplain Overlay district ("-FP") limits construction. FEMA typically updates the FIRMS every seven or eight years, at which time the City Council and the County Commission will memorialize them into zoning map through the adoption of a comprehensive rezoning. However, the rezoning process is unnecessary in the future given the language of Section 8.8.3B of the Code, which incorporates FEMA's FIRMs by reference. Also, the FIRMs are subject to change immediately after they are adopted through individual Letters of Map Revision (LOMRs), which remove properties from the 100-year floodplain upon individual property owner's requests. By removing the requirement that the City Council and County Commission actually rezone properties into the Floodplain Overlay, there will no longer be a question as to whether a LOMR by itself removes a particular property from the floodplain of if a separate rezoning is also necessary. It also reduces the mapping errors presented by the fact that the Floodplain Overlay is shown as a separate zoning district on the zoning map and not as a standalone overlay layer, thus increasing the likelihood of mapping errors. This proposal will involve changes to the following individual sections of the Code:

2.4.1:…**The Floodway (FW) and Floodplain Overlay (-FP) districts on the Zoning Map are generated, maintained and modified by FEMA; see Sub-Section 8.8.3B.**

9.3.3 (footnote*): *Only the body(s) may initiate a request for a comprehensive rezoning (see Sub-Section 9.5.12A)~~, with the exception of comprehensive rezonings related to Federal Emergency Management Agency floodway and floodplain maps~~.

9.3.4A: (remove the row entitled "FEMA Floodway and Floodplain Maps").

9.5.12A:…Only the legislative bodies may initiate a comprehensive rezoning~~, with the exception of comprehensive rezonings related to Federal Emergency Management Agency floodway and floodplain maps~~…

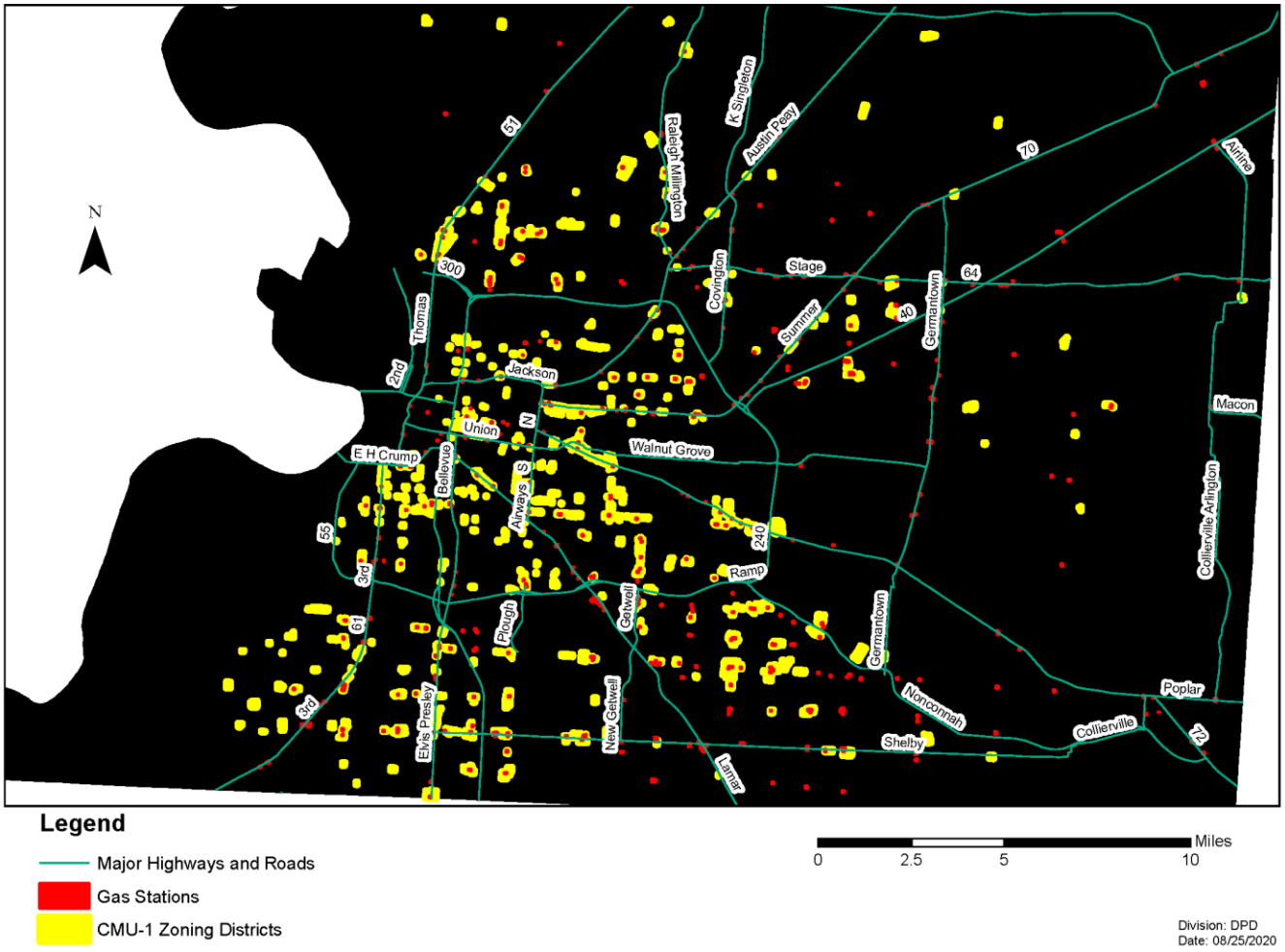
9.5.12B:…~~In addition, this procedure may be used to comprehensively zone properties in accordance with Federal Emergency Management Agency floodway and floodplain maps.~~

8. 2.5.2 and 2.6.3J(1)(g) (new section): Gas stations and convenience stores with gas pumps

There are three primary commercial zoning districts articulated in the Code, based on level of intensity: CMU-1, CMU-2 and CMU-3, with CMU-1 typically being in the closest proximity of residential zoning districts. This is reflected in the Use Table in Section 2.5.2, which generally only permits low-intensive uses in the CMU-1 district. However, convenience stores with gas pumps and gas stations are permitted in the CMU-1 district. This proposal would allow those gas stations that already exist in the CMU-1 district to expand and rebuild, but would require any *new* gas station in these districts to be reviewed by the Memphis City Council or Shelby County Board of Commissioners through the Special Use Permit process. This will involve changing the solid box ("■") in Section 2.5.2 for this use in the CMU-1 zoning district to a hollow box ("□"), as well as the following amendment to Item 2.6.3J(1)(f).

2.6.3J(1)(g): (new section) **Any convenience store with gas pumps or gas stations constructed in the CMU-1 district after January 1, 2021, or reactivated after one year of discontinuance, shall require the issuance of a Special Use Permit. Convenience stores with gas pumps and gas stations construction in the CMU-1 district prior to January 1, 2021, may be expanded and modified under the provisions of this Code. In addition to the approval criteria articulated in Section 9.6.9, the Land Use Control Board and governing body shall also consider the proximity of the proposed convenience store with gas pumps or gas station to both 1) other convenience stores with gas pumps and gas stations and 2) single-family residential zoning districts when reviewing an application for a Special Use Permit pursuant to this Item.**

CMU-1 Zoning and Gas Stations



Legend

- Major Highways and Roads
- Gas Stations
- CMU-1 Zoning Districts

0 2.5 5 10 Miles

Division: DPD
Date: 08/25/2020

This map above reflects the locations of the CMU-1 zoning district throughout the City of Memphis and unincorporated Shelby County in yellow and the location of gas stations in red; please note that Lamar Avenue from Bellevue on the west to I-240 on the east/south has

largely been rezoned to CMU-1 as a result of the City Council's passage of OPD Case No. Z 20-04.

9. 2.5.2: Standalone car washes

This use needs to be moved from its current use category in the Use Table (Retail Sales and Service) to a new use category (Vehicle Sales Service and Repair) since the latter is more appropriate for this use and can be found more readily by the reader.

10. 2.5.2 and 2.6.3R(2): Crematoria and sales of funeral merchandise

The use chart in Section 2.5.2 allows all funeral establishments, including crematoria and pet crematoria in the CMU-1 commercial zoning district by issuance of a Special Use Permit. This is misleading given that Paragraph 2.6.3R(2) only allows funeral directing and sales of funeral merchandise by Special Use Permit in the CMU-1 district. Also, since the sales of funeral merchandise where no funeral services are held are essentially commercial uses, they should be permitted in the CMU-1 district by right. This proposal will split what is now one use type in Section 2.5.2 into three to address this apparent conflict; the first one ("funeral homes, funeral directing") would require a Special Use Permit in the CMU-1 district, the second one ("sales of funeral merchandise") would be allowed in the CMU-1 district by right and the third ("all other funeral establishments, including crematorium and pet crematorium") would be excluded from the CMU-1 district. As is the case today, all three would be permitted by right by in the CMU-2, CMU-3, CBD, EMP and IH districts.

Funeral homes, funeral directing
Sales of funeral merchandise
All other funeral establishments, including crematorium and pet crematorium

Now that Section 2.5.2 is clear on which funeral uses are permitted in which district, the following section may be deleted:

2.6.3R(2): ~~Establishments engaged solely in the practices of funeral directing or selling funeral merchandise, as defined in Section 12.3.1 of this Code, may be permitted in CMU-1 districts by Special Use. No other funeral establishments, as defined herein, shall be permitted within CMU-1 districts.~~

11. 2.6.2I(2): Cell towers

The cell tower section of the Code is overcomplicated in that it repeats the same regulations for various types of cell towers (those that require a Special Use Permit, those that are permitted by right in the non-industrial zoning districts and those that are permitted by right in the industrial zoning districts). This proposal simplifies this section of the Code. The first section of this portion of the Code affected by this change is the heading of Paragraph 2.6.2I(2) since it will cover all cell tower types and not just those process through Special Use Permits:

2.6.2I(2): CMCS Towers ~~Special Use Review – All Tower Types~~

Also, the heading of the first section of that Paragraph, Item 2.6.2I(2)(a), and the first section of that Item, Sub-Item 2.6.2I(2)(a)(1) need to change:

2.6.2I(2)(a): **Towers reviewed under the Special Use Permit process**
This Item shall apply to any tower that requires a Special Use Permit.
1. Application
The application ~~for a special use permit approval (see also Chapter 9.6)~~ shall include the following…

Also, the requirement that a licensed engineer certify that a tower can withstand winds, etc., should be moved from the section regarding the Special Use Permit application to a new section requiring this prior to the issuance of a building permit for *all* cell tower types, which is the practice today:

2.6.2I(2)(l) (new section): (moved from existing Sub-Sub-Item 2.6.2I(2)(a)(1)(b)) **Prior to the issuance of a building permit, a** study from a professional engineer **shall be submitted** which specifies the tower height and design including a cross-section of the structure, demonstrates the tower's compliance with applicable structural standards, including a certification that the tower will withstand at a minimum sustained winds in accordance with the appropriate building code, and a description of the tower's capacity, including the number and type of antennas which it can accommodate.

This will also involve amending the language allowing setback waivers in the industrial districts, since they will now be located in the same section as those outside of the industrial zoning districts, as well as moving what is now Sub-Item 2.6.2I(3)(b)(3) into sec. 2 below:

2.6.2I(2)(d): Setbacks **and Spacing**
1. CMCS facilities shall adhere to the setback requirements of the zoning district in which they lie. In addition, the CMCS tower shall be set back a minimum of 150 feet from any adjacent, habitable single-family residential dwelling existing at the time of the application of the CMCS facility, as measured from the centerline of the proposed CMCS tower to the outer wall of the closest point of the adjacent dwelling. Exceptions to the minimum setback requirements of the zoning district may be permitted through **the** Special Use **Permit process** ~~Review~~, but not to the minimum 150-foot separation between a CMCS tower and an adjacent single-family residential dwelling.
2. All CMCS towers **located outside of the industrial zoning districts** must be spaced a minimum distance of one-quarter mile as measured from property line to property line. **This provision may be waived through the Special Use Permit process.**

This proposal will also repeat a requirement that all towers, structures and other ancillary structures be removed within 180 days of a cell tower going out of service. This language is currently found in Sub-Item 2.6.2I(2)(c), which only applies to towers approved through the Special Use Permit process on public land, and Item 2.6.2I(3)(l), which only applies to towers approved by right in the non-industrial zoning districts. The former section also contains a requirement that a bond or other surety be posted to guarantee the removal from public property. By adding language to a new Paragraph 2.6.2I(2)(d), *all* cell towers are to be removed within 180 days:

2.6.2I(2)(j) (new section): **Any facility which has ceased operations for a period of 180 continuous days shall be dismantled and removed from the site at the owner's expense.**

12. 2.6.4D and 6.5.1: TDEC's involvement with landfills and gravel mining

TDEC, the Tennessee Department of Environment and Conservation, has the subject matter expertise and therefore the primary responsibility to regulate both landfills and gravel mining operations, yet the UDC currently requires the posting of performance bonds with the Building Official, duplicating processes administered by the State. This proposal will eliminate the requirement that a performance bond with the Building Official, as it appears this has rarely if ever been done in the past, and allow land reclamation plans approved by TDEC to satisfy the requirements of the UDC that a property be returned to its predevelopment state. This will involve deleting Paragraphs 2.6.4D(3) and (4) with regard to landfills and Sub-Section 6.5.1F with regard to gravel mining operations. In addition, Sub-Sections 6.5.1D and E, which also deal with gravel mining operations, will be amended thusly:

6.5.1D: All excavations shall be filled and the land restored, re-graded and re-sloped as nearly as practicable to its original condition**, or in accordance with a land reclamation plan approved by TDEC,** and grade within 90 days after the date sand, gravel or other extraction operations cease…

6.5.1E: Land shall be restored, re-graded and re-sloped as nearly as practicable to its original condition and grade provided, however, that after such reclamation activities, no slope on such land shall be steeper than three feet horizontal to one foot vertical and no greater quantities of drainage water shall flow onto adjoining properties or shall flow at a faster rate onto adjoining properties than such drainage water flowed prior to the commencement of sand, gravel or other extraction or processing activities on the land reclaimed. **A land reclamation plan approved by TDEC may satisfy the requirements of this Sub-Section.**

13. 2.6.4H: Grammatic error

2.6.4H: A container building is any principal or accessory structure used for a purpose other **than** a dwelling unit that is wholly or partially located within a shipping container.

14. 2.7.1A: Grammatic error

Accessory structures and uses shall be accessory and clearly incidental and subordinate to a permitted principal **use** ~~uses~~…

15. 2.7.2A(4) and 12.3.1: Accessory structures in residential front yards

The Code currently prohibits accessory structures that are "forward" of residential structures, but this could arguably permit an accessory structure, such as a detached garage, within a lot's front yard but to the side of the structure. The language below clarifies that no accessory structure shall be located in residential front yards. This will also involve revising the definition of "front yard" and "required front yard," to define the former as any area between the street

and the existing home on a lot, regardless of whether that home is set back beyond the required set back.

2.7.2A(4): In single-family, open and residential zoning districts, no accessory structure shall **be located within the front yard** ~~extend forward of the front building~~…

12.3.1:

YARD, FRONT: A yard extending across the entire front of the lot measured between the front lot line of the lot and a line drawn parallel to the front façade of the principal building on the lot, or any projection thereof.
YARD, FRONT **(REQUIRED)**: A yard extending across the entire front of the lot measured between the front lot line of the lot and a line drawn parallel to the front lot line at the required building line on the lot, or any projection thereof.

16. 2.7.6: Swimming pool equipment in the side yard

Section 2.7.6 addresses pool equipment in the side yards of lots. This language slightly differs from Item 3.2.9E(5)(a), which allows such placement provided the equipment is screened from the street. The following changes will insert a cross-reference from Section 2.7.6 to Item 3.2.9E(5)(a):

2.7.6: Swimming Pools: A swimming pool or the entire property on which it is located shall be walled or fenced to prevent uncontrolled access to such swimming pool from the street or from adjacent properties. Such swimming pool shall not be located in any required front yard and shall not be closer than five feet to any property line. Swimming pool equipment ~~on residential lots~~ may **encroach into** ~~be located within~~ the side yard setback**, subject to** ~~so long as it is at least five feet from the property line and is screened from any public right-of-way. See~~ **Item** 3.2.9E**(5)(a)**~~, Encroachments~~.

17. 2.9.4J: Tire sales

A comprehensive rezoning of properties along Lamar Ave. (OPD Case No. Z 20-04) reclassified many of these parcels that are currently in the CMU-3 zoning district to the CMU-1 zoning district. The primary purpose of this comprehensive rezoning initiated by the Memphis City Council, as well as the building permit moratorium also approved by Council that promulgated it, was to disallow the further proliferation of uses allowed in the CMU-3 district but not the CMU-1 district. These uses include many vehicular-oriented establishments, particularly vehicle repair and used tire sales. However, both the CMU-1 and CMU-3 zoning districts allow tire sales establishments since both new and used tire sales establishments are classified as “vehicle service,” the lowest intensity vehicular-oriented type of establishments. Rather than change the zoning code to prohibit all tire sales establishments in the CMU-1 zoning district, this proposal would differentiate between new and used car sales establishments since the latter are of similar intensity as vehicle repair, which is not permitted in the CMU-1 district. In fact, a few new tire sales establishments around town are located in the CMU-1 district and are appropriately sited (see list below, particularly the properties in *italics*); it would not serve the public interest to convert those sites into nonconforming uses.

1. Goodyear, Union and Bellevue: CMU-3
2. Firestone, Madison and Camilla: CMU-3

3. Pep Boys on Poplar at Merton: CMU-3
4. *Gateway on Poplar across from East: CMU-1*
5. *Firestone, Poplar and Highland: CMU-1*
6. *Goodyear, Winchester and Kirby: PD: CMU-1*
7. Gateway, Macon just E of Germantown Pkwy: PD: CMU-2
8. Raleigh Tire, Germantown and Club Center: PD: CMU-2
9. Firestone, Mt. Moriah and Park: CMU-3
10. Firestone, Summer just W of White Station: CMU-3
11. Firestone, Winchester across from Hickory Ridge Mall: PD: CMU-2
12. Jackson Tire and Alignment, Jackson and Bayliss: CMU-3
13. Firestone, Austin Peay at Singleton Pkwy: PD: CMU-2
14. Gateway Tire, Covington Pike N of Yale: PD: CMU-2

This proposal will differentiate new and used car sales establishment by amending the list of uses included under both "vehicle service" and "vehicle repair" that is included in Sub-Section 2.9.4J.

Principal Uses
Vehicle service including…**new** tire sales and mounting **Vehicle repair** including…**used tire sales and mounting**

18. 2.9.4J: Automobile service stations

This section lists "automobile service stations," which is not a defined term in Sec. 12.3.1 of the Code, as a type of auto repair use. Presumably, a service station is a gas station that provides some automotive service. However, gas stations are required to be at major intersections while auto service is *not*. This conflict, which could be interpreted as allowing a service station at a site that prohibited a gas station, can be corrected by striking "automobile service station" from Sub-Section 2.9.4J (vehicle sales, leasing, repair and service) since this use is already listed in Sub-Section 2.9.4H (retails sales and service).

19. 2.9.5D: Towing services

A wrecker service with an impound lot is considered by the Code as an industrial use while a towing service without an impound lot is considered a commercial use. The former is listed under Sub-Section 2.9.5D and the latter is listed under Sub-Section 2.9.4J; this proposal will add a cross-reference to Sub-Section 2.9.5D to assist in the administration of this distinction:

> … Impound lot, wrecker service includes city wreckers, auto storage, excluding those impound lots permitted under Sub-Section 2.9.5B **and those towing services permitted under 2.9.4J**

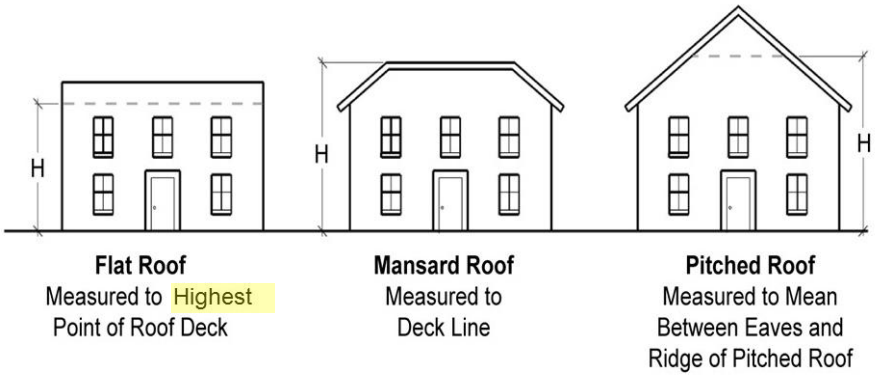
20. 3.1.3B: Grammatic error:

…developments with multiple single-family detached and single-family attached housing types on a single tract**,** ~~or~~ lot~~,~~ **or** site are subject to the site plan review process.

21. 3.2.6A(1) and (6): Building height

In the building height section, the narrative of Paragraph 3.2.6A(1) conflicts with its graphic, as the former says building height is measured from the highest point of a flat roof and the graphic says it is measured from the lowest point of a flat roof. This proposal would correct the graphic to match with the language of the narrative:

3.2.6A(1):



In Paragraph 3.2.6A(1), the term single-family detached is repeated; the second reference should be single-family *attached*:

3.2.6A(6): Additional height above that permitted in the district or shown on an officially adopted height map may be permitted though the special exception process (see Chapter 9.14), except for all single-family detached and single-family **attached** ~~detached~~ housing types.

22. 3.3.1B and 3.3.1G(1): Lots

The beginning of Sub-Section 3.3.1B covers two important matters involving lots: the fact that all lots must have frontage on a public roadway and that an alley may not constitute a roadway for frontage purposes. After that, this section states that lots along arterials must be at least 100 feet wide. This provision did not exist prior to the adoption of the Unified Development Code in 2010 and, under an interpretation that has attempted to be made by citizens opposed to at least one particular subdivision, would result in tens of thousands of nonconforming lots around the city. These existing lots that contain less than 100 feet in width front such roadways as Poplar, Walnut Grove, Park Ave., Southern, Central, Madison, Peabody, McLemore, South Parkway, North Parkway, East Parkway, Person, Kimball, Rhodes, Barron, Quince, Mitchell, Raines, Shelby, Holmes, Neely, Milbranch, St. Elmo, Frayser, Overton Crossing, Whitney, Raleigh-LaGrange, Tillman, Holmes, Highland, Waring, Perkins, Mendenhall, White Station, Trinity, Houston Levee, Collierville-Arlington, Navy, Raleigh-Millington, Hickory Hill, Kirby, Riverdale, Hacks Cross and Forest Hill-Irene, all of which are arterials, thus creating tens of thousands of nonconforming lots. This results in the inability of any building permit being issued for homes on these lots until variance action could be taken by the Board of Adjustment. While it was admirable for the drafters of the UDC to prevent a proliferation of

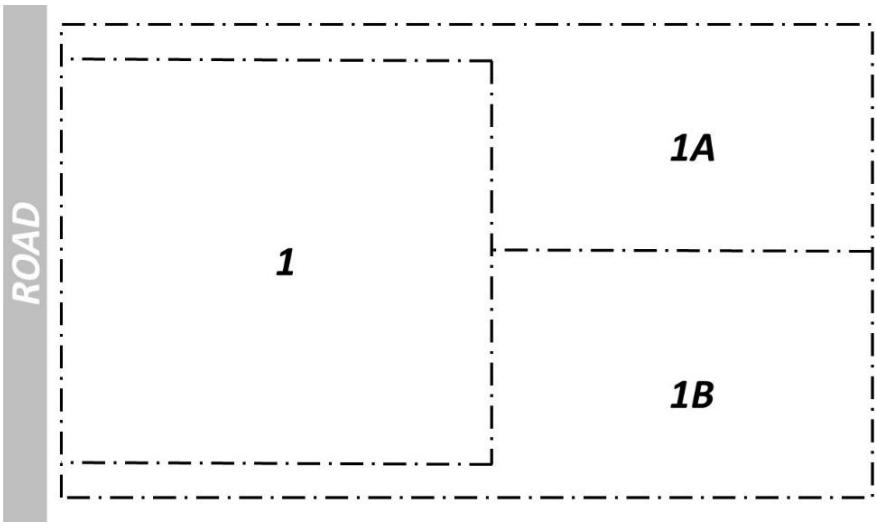
curb cuts along these roadways, the resulting chaos in the marketplace is unwarranted. Lot frontage should be governed solely by the lot width requirements of the zoning district. In addition, the following amendment would delete the minimum lot with of 16 feet for flag lots, a provision that is already contained in the flag lot regulations of the Code (specifically, Paragraph 3.3.1G(2)).

> 3.3.1B: Unless otherwise approved, each lot must have frontage on a public street or an approved private drive. An alley may not constitute frontage. ~~In no instance shall the minimum required frontage be less than 16 feet. No single-family detached or single-family attached unit with a frontage of less than 100 feet may have direct access to any street classified as an arterial or larger. Single-family detached or attached units with a frontage of less than 100 feet may be located along a public street or approved private drive classified as an arterial or larger provided that access to the units is in the form of either a frontage road or rear alley access (see Sub-Section 5.2.7F).~~

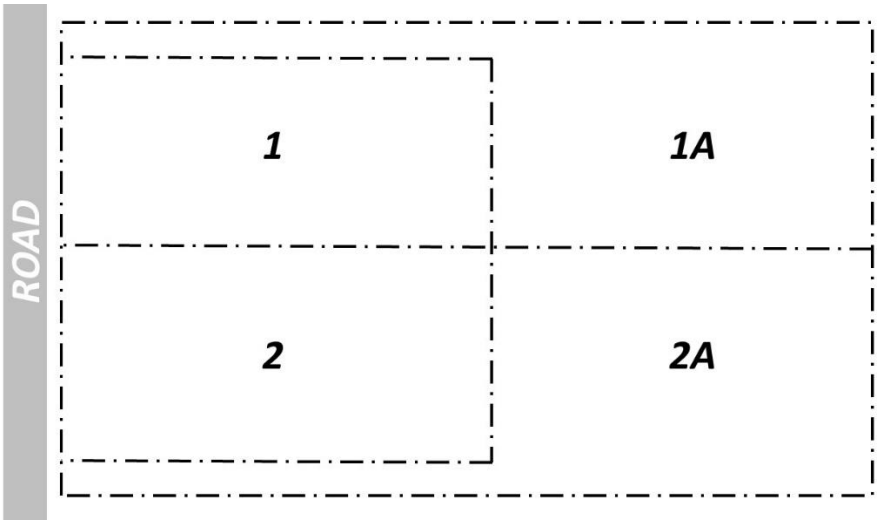
Paragraph 3.3.1G(1) prohibits multiple flag lots from abutting one another. This language was new with the adoption of the Unified Development Code in 2010 and at least partly in response to two developments in Eastern Shelby County that avoided the subdivision review process by consisting of exempt, four-acre tracts organized as flag lots. Here is an aerial of one of those developments, demonstrating the multiple flag lots that all technically have the prerequisite amount of road access:

The outright prohibition of multiple abutting flag lots found in the Code today is inappropriate due to two reasons: 1) it prevents the filing of a subdivision application to achieve the layout of multiple flag lots such as the one pictured above, its purported purpose, and 2) it prevents small flag lot developments that accommodate the division of property among family members. The language proposed for this section of the Code corrects both of these issues. See image below, where the owner of Lot 1 would like to create two flag lots, Lots 1A and 1B.

This two-lot flag lot creation would be permitted under the proposed language, either as exempt tracts (if large enough) or as a subdivision.



See image below, where the owner of Lot 2 would like to create a flag lot, 2A, but after the property owner of Lot 1 has already created Lot 1A, also a flag lot. The proposed language below would not preclude the owner of Lot 1 from doing this because it deletes the carte blanch prohibition on a "series" of flag lots being located along the same roadway.



3.3.1G(1): Where a flag lot is required to provide access to a landlocked area, no more than **two** ~~one~~ flag lot**s** may be created **without necessitating the filing of a subdivision, notwithstanding the subdivision review exemptions of Sub-Section 9.7.3. This Paragraph shall not apply to any flag lot created before the adoption of this Code** ~~(a series of flag lots accessing the same roadway is not allowed)~~.

23. 3.7.2B: Percent of housing types

This section of the Code addresses setbacks and other bulk provisions for the multi-family zoning districts, the RU-3, RU-4 and RU-5 districts. In addition, it sets a maximum percentage of building types for sites over 10 acres and for sites 1-10 acres. The intent behind these regulations is to encourage a mixture of different types of residences and prevent monolithic developments. This intent is better manifested on large lots of over 10 acres than those less than 10 acres, so this proposal would eliminate the 1-10 category in the tables for the RU-3, RU-4 and RU-5 districts. The tables for the RU-3 and RU-4 districts allow a 100% apartment community but does not allow a 100% conventional single-family community, which would appear to be counterintuitive. Also, the table RU-5 allows 100% for *all* housing types, so its deletion would have no effect on current regulation.

24. 3.9.1A, 3.9.2A, 3.9.2B(4) and 3.9.2I: Contextual infill standards

Contextual infill standards for new subdivision and homes, which includes regulations regarding garage placement, lot width, front yards, etc. took effect with the adoption of the Unified Development Code in 2010. Most of the homes in Memphis and Shelby County built prior to that date do not meet these regulations, so the following language is required to make it clear that modifications to these homes may occur without a variance:

> 3.9.1A(1): The garage and carport placement requirements of this Section and Sub-Section 3.9.2H shall apply to all housing types within any site subject to Section 3.9.2. **Garages and carports constructed prior to January 1, 2020, are not subject to this Section and shall not be considered nonconforming.**
>
> 3.9.2A: The following standards are intended to accommodate the majority of infill development in existing residential neighborhoods. They have been crafted to allow an applicant (and staff) to look to the surrounding "context" for guidance in construction. These standards are intended to encourage reinvestment in existing neighborhoods and reinforce the traditional character of established residential neighborhoods. **Dwellings constructed prior to January 1, 2020, are not subject to this Section and shall not be considered nonconforming.**

The Code allows for the waiver of the regulations that make up contextual infill standards for new subdivisions. The section of the Code below, which is located within Article 3, allows such waivers to be approved through the subdivision process; however, Paragraph 9.7.6G(1) requires that minor subdivisions (those that may be approved administratively by staff) meet all of the provisions of Article 3 be met. The proposed language below would clarify that any waivers of the contextual infill standards would need to be approved by the Land Use Control Board in a duly noticed public hearing as a *major* subdivision and not by staff as a minor subdivision. It would also allow the Landmarks Commission to waive certain aspects of the contextual infill standards, such as size or porch, through its interpretation and administration of the historic overlay design review guidelines in its approval of Certificates of Appropriateness, also made during a duly noticed public hearing.

> 3.9.2B(4): The provisions of this Section may be waived through the **major** subdivision approval process, provided a determination is made that no substantial harm will be imposed upon the health, safety and welfare of the surrounding neighborhood. **The**

provisions of this Section may also be waived through the approval of a Certificate of Appropriateness by the Memphis Landmarks Commission.

Finally, this section has a grammatical error:

3.9.2I:..A minimum porch depth of six feet may be approved by the **Zoning Administrator** ~~Planning Director~~ (see Item above for this change) if any property on the same block face has a front porch ~~less~~ six feet **or less** in depth.

25. 3.10.2B(1): Incorrect reference

The minimum front and side street setbacks of 20 feet as specified in **this** Sub-Section ~~3.10.1A~~ above may be reduced to zero feet provided the following provisions are met…

26. 3.10.2B: Missing slash ("/")

Side***/***rear abutting single-family

27. 3.10.2C: Housing in non-residential districts

This table highlights the setbacks, lot width and other lot dimensions for certain housing types permitted in the non-residential zoning districts. However, it omits two important setbacks: the front setbacks for conventional and side yard homes. This proposal will replace the "- -" symbol for these two housing types with "20" to align with not only the other types of housing in these zoning districts but similar tables in Section 3.7.2.

28. 3.10.3G(3)(b) and 3.10.3G(3)(c): Redundancy

These two sequential sections read the same; the latter should be deleted.

29. 4.3.3: Streetscape plates along private drives

Sub-Section 4.3.1C reads "Private streets and drives are exempt from the streetscape standards provided in this Chapter unless conditioned otherwise by the Land Use Control Board, Board of Adjustment or legislative bodies," but Section 4.3.3 states that private streets are required to contain streetscapes. The following language will correct this conflict, as many private drives amount to nothing more than parking lot aisles:

4.3.3: The following streetscape plates must be installed along public ~~and private~~ streets abutting the subject property.

30. 4.3.5B(2): Incorrect numbering

For S-6, S-7, S-~~2~~ 9, S-12 and S-13 plates, trees shall be planted no more than 4' behind the back of curb.

31. 4.4.7D: Misspelling

> No obstruction to cross visibility shall be deemed to be **excepted** ~~accepted~~ from the application of this section because of its being in existence at the time of the adoption hereof, unless expressly exempted by the terms of this section.

32. 4.4.8D(2): Correct terminology and a typo

This section of the Code requires an amendment to change the verb "amended" to "modified" since the type of change involved (reflecting the installation of a gate or guardhouse on a plat) would involve a minor or major modification to a subdivision plat or plan and not an amendment, which involves a separate process. Also, there is an "a" that needs to be removed from this section:

> A subdivision plan or plat or planned development outline or final plan must be **modified** ~~amended~~ to indicate the location of gates, guardhouses and any realignment of common areas or infrastructure associated with the gates and guardhouses. The installation of ~~a~~ gates and guardhouses in subdivisions…

33. 4.4.8D(3): Typo

> For the purposes of the appeals processes outlined in Chapters 9.6 and 9.7, only the applicant**,** homeowners **association** or property owners association may appeal the determination of the **Zoning Administrator** ~~Planning Director~~ (this amendment is covered above) to the Land Use Control Board.

34. 4.5.2: Parking on grass

Section 14-4-92C of the Memphis Code of Ordinances (part of the City's residential maintenance code) reads: "All vehicles parked or stored in single-family residential, duplex or multifamily zoning districts shall be parked or stored on asphalt, concrete or other hard surface dustless materials as approved by the city or completely enclosed within a building." To allow zoning inspectors to make citations for parking in the grass (in addition to code inspectors that administer the city's residential maintenance code), the following language is proposed:

> **4.5.2E** (new section): **Parking on grass**
> Except as provided in Paragraph 4.5.5C(2), parking on grass in the residential zoning districts is prohibited.

35. 4.5.3A(1): Incorrect cross-reference

> …A shared parking reduction may be allowed in accordance with an approved alternative parking plan (see Section **4.5.4** ~~F~~).

36. 4.5.3B: Misspelling

> …S~~B~~C**B**ID…

37. 4.5.5D(2)(b): Grammar and misspelling

> If seeking preservation credits ~~under~~ for an existing tree located in an interior island, terminal island, or perimeter island then such island must provide a nonpaved area…
>
> (in graphic): **Terminal** ~~Terminial~~

38. 4.6.4F(2)(g): Incomplete sentence

> ~~Where other uses, including~~ **All** pedestrian, bike or other trails within **landscaping and screening areas** ~~these uses~~ must be maintained to provide for their safe use.

39. 4.6.5J(3)(b): Unnecessary comma

> Sight proof fences must be constructed of materials~~,~~ such as treated wood and wrought iron…

40. 4.6.5L: Ownership of buffers

This section of the Code allows a buffer to be owned by the property owner of the land providing the buffer or allow him or her to transfer it to a conservancy or related organization. The following change from "shall" to "may" will make the first part of this section match its second part:

> Buffers ~~shall~~ **may** remain under the same ownership as the property providing the buffer; they may be subjected to deed restrictions and subsequently be freely conveyed; or they may be transferred to any consenting grantees, such as the City or County, an approved land conservancy or land trust, or a property owners association…

41. 4.6.5M(2): Grammatical error

> Financial hardship due to meeting the requirements of this ~~is~~ section shall not be sufficient justification for alternative compliance.

42. 4.6.7: Fencing

There is a contradiction between Paragraph 4.6.7E(4), which allows uncoated chain link fencing in the industrial zoning districts, and Paragraph 4.6.7E(1) which sets out permissible materials for all fencing but does not include uncoated chain link fencing. This contradiction can be addressed with the following proposed strikethrough. Also, stucco is added as an acceptable type of masonry for walls.

> 4.6.7E(1): Permissible Materials. Fences and walls must be constructed of high quality materials, such as decorative blocks, brick, stone, masonry panels, **stucco,** treated wood and wrought iron; and, where permitted, ~~vinyl-coated~~ chain link. Electrified fences, barbed wire or concertina wire fences are not permitted in a residential district.

This section will also need to be amended to make it clear where coated chain link fencing is required:

> 4.6.7E(4): Chain-Link Fences. Uncoated chain-link fences are not permitted except in the EMP, WD, and IH districts. Chain-link fencing **in all other districts** must be galvanized, polyvinyl chloride (PVC) color coated in either black, dark green or dark brown color coatings and part of an evergreen landscape screening system. At the intersection of a driveway and a street and on all corner sites (the intersection of two streets), a clear sight triangle shall be established as set forth in Section 4.4.7.

Sub-Section 4.6.7F allows the Planning Director (to be known as the Zoning Administrator under this ZTA), to approve additional fence height, reduced setback, etc. for certain fences. The proposed language allows alternate fence design, which would cover instances in which the request involves, as an example, brick piers at a frequency differing from that outlined in the Code.

> 4.6.7F: Administrative Deviation. The **Zoning Administrator** ~~Planning Director~~ may permit additional fence material**, alternate fence design,** additional fence height, or reduced setback through the administrative deviation if it is determined that such allowance is not contrary to the public interest and will not be injurious to the surrounding neighborhood. Factors to be considered by the **Zoning Administrator** ~~Planning Director~~ when making such an administrative deviation shall include the material, height or setback of fencing in the immediate vicinity of the subject site, the classification of the roadway abutting the subject site and the proposed use of the subject site (see Chapter 9.21).

43. 4.6.8A(2): Redundancy

This section of the Code may be deleted as it is redundant with the section that follows it:

> 4.6.8A(2): ~~Where allowed, drive-thru windows and lanes placed between the right-of-way of primary street and the associated building require landscape plantings and/or berms installed and maintained along the entire length of the drive-thru lane, located between the drive-thru lane and the adjacent right-of-way (not including an alley).~~
>
> 4.6.8A(3): Drive-thru windows and lanes placed between the right-of-way and the associated building require landscape plantings installed and maintained along the entire length of the drive-thru lane, located between the drive-thru lane and the adjacent right-of-way (not including an alley). Such screening must be a compact evergreen hedge or other type of dense foliage as permitted in Section 4.6.9. At the time of installation, such screening must be at least 36 inches in height and reach a height of 48 inches within two years of planting.

44. 4.6.8B(2) and 4.6.9C: Misspellings in the landscaping ordinance:

> 4.6.8B(2): ~~…Compatibly~~ **Compatibility** of material is subject to…
>
> 4.6.9C (Tree E): Yaupon ~~Holy~~ **Holly**

45. 4.8.4B(3)(b): Outdoor storage

The following two sections of the Code concern outdoor storage requirements. Sub-Item 1 requires a clarification in that the only regulation waived for properties not within 500 feet of single-family residential districts is the language in that Sub-Item and not the rest of the outdoor storage section. Sub-Item 3 is no longer necessary since Sub-Item 2 before it addresses the same issue: that outdoor storage is prohibited within close proximity of the public right-of-way.

4.8.4(B)(3)(b)

1. General outdoor storage shall be screened along the public street and any public access easement by a Class III buffer as set forth in Section 4.6.5. In situations where general outdoor storage is located abutting or across the street from a residential district, such screening shall be high enough to completely conceal all outdoor storage from view. General outdoor storage on sites in the EMP, WD and IH Districts that are not within 500 feet of single-family residential zoning districts, as measured along the public right-of-way, are exempt from this **Sub-Item** ~~requirement~~.
2. All general outdoor storage shall be located at least 15 feet from the public right-of-way and any abutting residential use or residential district.
3. ~~No general outdoor storage shall be permitted in a front setback area.~~

46. 4.9.1C, 4.9.6L and 8.3.13G(7): Wayfinding

The Code uses the terms “way finding,” “way-finding” and “wayfinding.” This proposal will change language in the sections cited above to “wayfinding.”

47. 4.9.2, 4.9.8: Billboards

The following proposal involves the section of the Code dealing with billboards; these proposed amendments reflect current interpretations and would not result in a change in how the current regulations are administered.

4.9.2B(4), (5) and (6): Billboards downtown

These three sections of the Code redirect the reader to the Downtown Memphis Commission’s sign code that is codified elsewhere in the Memphis Code of Ordinances. However, that code does not address standalone, or detached, off-premise advertising (billboards). The language below will make this clear:

4.9.2B(4): Signs located in the Central Business Improvement District (CBID)**, other than those classified as off-premise advertising signs established before January 23, 1973,** shall be subject only to the provisions of Memphis City Code §§12-32-1 and 12-36-1, the portion of the City Code commonly referred to as the CBID Sign Code (see Map 1 above). **Off-premise advertising signs in the CBID established before January 23, 1973, shall be governed by Section 4.9.8 of this Code.**

4.9.2B(5): Signs located in the South Central Business Improvement District (SCBID)**, other than those classified as off-premise advertising signs established before January 7, 1997,** shall be subject only to the provisions of Memphis City Code §§12-32-1 and 12-36-1, the portion of the City Code commonly referred to as the CBID Sign Code (see Map 1 above). **Off-premise advertising signs in the SCBID established before January 7, 1997, shall be governed by Section 4.9.8 of this Code.**

4.9.2B(6): Signs located in the Uptown District (U)**, other than those classified as off-premise advertising signs established before January 7, 1997,** shall be subject only to the provisions of Memphis City Code §§12-32-1 and 12-36-1, the portion of the City Code commonly referred to as the CBID Sign Code (see Map 1 above). **Off-premise advertising signs in the Uptown District established before January 7, 1997, shall be governed by Section 4.9.8 of this Code.**

4.9.8A(2): Location of new billboards

Sub-Section 4.9.8A lists the permitted locations for new billboards, including the required zoning districts in which they must be located, the fact that they cannot share a lot with another structure and that they must be located along a "US Interstate highway." This language leaves open the possibility that Interstate 269 and future Interstate 22 (Lamar Avenue) could potentially have new billboards. The following language would limit new billboards to the three highways in Shelby County that currently allow billboards:

4.9.8A(2): Located within 300 feet of ~~an~~ U.S. Interstate **H**ighway**s 40, 55 and 240**; and

4.9.8E(1): Direction of billboards

This section of Code prohibits two digital billboards facing the same direction from being within 2000 feet of one another. The purpose of this section is to limit visual distraction to drivers. However, the term "same direction" is not defined. Two north-facing signs would surely be deemed to be facing the same direction, but what about one north-northeast-facing sign and another sign facing north-northwest? These two signs could be seen at the same time by a passerby, while technically not facing the "same direction." The language below would require digital billboards to be positioned at least 90 degrees from one another if located within 2000 feet:

4.9.8E(1): One sign (either attached or detached) with one thousand (1,000) foot spacing between such signs (measured from the center of the pole or edge of wall if attached) located along the same side of the same road. However; If more than eleven percent (11%) of a sign surface area consists of an automatic changeable copy video element there shall be a 2,000-foot separation between it and any other automatic changeable copy video sign with more than eleven percent (11%) of its sign face containing an automatic changeable copy video element along the same side of the same road facing the same direction. **For the purpose of this Sub-Section, sign faces positioned within the same 90-degree circular sector shall be considered to be facing the same direction.**

4.9.8G(1) and 4.9.8G(3): Contradictory separations from the interstate

Paragraph 4.9.8G(1) of the Code contains the minimum setback from the interstate highway. However, it contains a confusing "and/or" between two measurements: a minimum 20-foot setback from the right-of-way and a 100-foot setback from the emergency lane. This "and/or" should be clarified in such a way to allow a billboard to be closer to the interstate highway, which will effectively more it further from whatever commercial, residential and other uses may lie on its other side.

> 4.9.8G(1): No portion of a detached sign, if it is legible from the interstate freeway, shall be closer than twenty (20) feet from the interstate freeway right-of-way ~~and/~~or one hundred (100) feet from any emergency stopping shoulder lane**, whichever is less**.

In addition, Paragraph 4.9.8G(3) states that billboards are not to be located within 100 feet of residentially-zoned property. This section should be clarified to read this does not include interstate highways, which are zoned residential, since the section above allows billboards within 20 feet of interstates:

> 4.9.8G(3): No portion of a detached sign, pole or other supporting structure shall be located within one hundred (100) feet of any property zoned residential or the residential portion of a planned development. **This Paragraph shall not apply to interstate highway right-of-way zoned residential.**

4.9.8G(4): Computation of billboard area

This paragraph contains the maximum size of billboards. However, a cross reference is needed to Paragraph 4.9.6A(3), which states that the size of signs is regulated based on the number of square feet seen from one point within the public right-of-way. However, since many billboards are splayed in a "V" formation so they are angled towards the highways, the following caveat is proposed:

> 4.9.8G(4): The maximum gross surface area of a sign is as follows:
> Along all U.S. Interstate Highways in Memphis and Shelby County: six hundred seventy-two (672) square feet. **Sign faces may be splayed in a "V" formation at a maximum of 45 degrees for the purposes of adhering to the computation of gross surface area under Paragraph 4.9.6A(3). Sign faces may not be splayed in an "X" formation.**

Example of a sign at Sam Cooper and Highland with a splay of 90 degrees, which allows both signs to be read at the same time.

4.9.15F(2)(c): Section change

This section of the Code uses the term "subdivision," which is not a term used in section nomenclature under Chapter 1.12. Since it refers to other Items within its paragraph, the following change is recommended:

> 4.9.15F(2)(c): Any period of such discontinuance caused by government actions, strikes or acts of God, without any contributing fault by the nonconforming user, shall not be considered in calculating the length of discontinuance for the purposes of this **paragraph** ~~subdivision~~.

48. 6.1.2B(3)(c)(3): Tree ordinance

This section of the Code states that side and rear screening requirements may be waived if an equivalent or alternative tree placement is approved through the tree permit process. The problem is that this section is placed in the tree survey waiver section of the tree ordinance and not the section entitled "approval of equivalent alternative." This proposal would move what is currently Sub-Item 6.1.2B(3)(c)(3) to a new Sub-Item 6.1.2B(3)(a)(3):

> In cases where **an** ~~the~~ equivalent alternative is **approved** ~~used pursuant to paragraph a above~~, the **Zoning Administrator** ~~Planning Director~~ (details on this amendment are described in Item 1 above) may also waive the side and rear yard screening requirements set forth in the landscape enhancement plates upon a finding that the implementation of such plates is impractical or unnecessary, based on the existing use of the adjacent property.

49. 6.1.3B(2): Missing commas

> …shall consult with the Shelby County Environmental Improvement Committee and/or the Memphis City Beautiful Commission**,** whichever is appropriate**,** prior to approval of any distribution of tree bank funds.

50. 7.1F(1)(c): More specific cross-reference

> All other development that meets the provisions of **Sub-**Section 7.2.9**A** in the SCBID Special Purpose District.

51. 7.2.3D: Uses permitted in the R-SD district

This section of the Code lays out additional uses that are permitted in the R-SD (South Downtown Residential) zoning district in the South Main area by linking to the CMU-1 commercial mixed use district. The proposed language will clarify that only those uses permitted by right in the CMU-1 zoning district would be permitted by Special Exception in the R-SD zoning district; this will avoid the interpretation that a use that would require a Special Use Permit (which requires two public hearings, one before the Land Use Control Board and one before the Memphis City Council) in the CMU-1 district would only require a Special Exception (which only requires a hearing before the Land Use Control Board) in the R-SD district:

> Uses **permitted by right** in ~~accordance with~~ the Commercial Mixed Use-1 (CMU-1) District shall be permitted throughout the remainder of the R-SD District subject to approval of a Special Exception (see Section 7.2.10) by the Land Use Control Board (LUCB) and the following criteria…

52. 7.3.11: Incorrect reference in Uptown use table

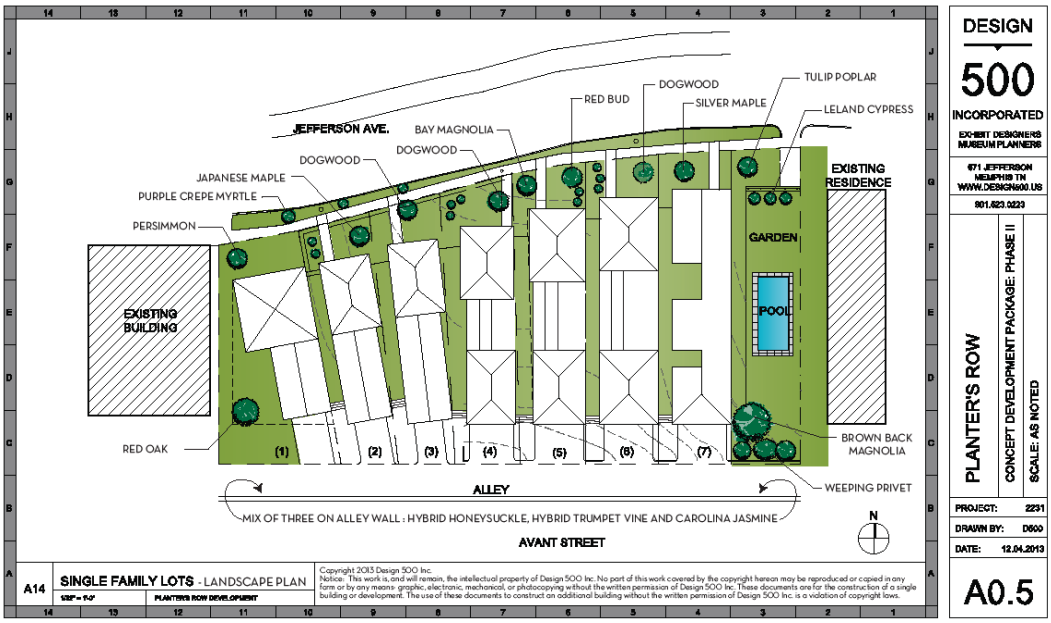
The Uptown Special Purpose District originally anticipated a zoning district that was never implemented either in the text of the amendment (OPD Case No. ZTA 01-004) or on the map (Case No. Z 01-125), the Uptown Waterfront zoning district. While most references to this zoning district were removed from the text prior to final adoption by the Memphis City Council: one remains as a footnote and associated with two land uses in Section 7.3.11. This proposal will eliminate these references:

Restaurant or Carry-Out Restaurant			X ~~15~~	P4	X
Marina-Recreational Craft		X ~~15~~	X ~~15~~		

X = Use permitted by right; S = Use requiring legislative site plan review and approval subject to the issuance of a special use permit; P4 = Such use shall be part of hospital and designed and intended primarily to serve patients or employees; ~~15 = Use permitted by right in the Uptown Waterfront Overlay District~~; C=Use permitted by issuance of conditional use permit.

53. 7.3.11, 8.2.2D and 8.3.11: Planned developments in Uptown and the Medical and University Districts

In 1974, the citizens of the City of Memphis amended the Memphis Charter to allow planned developments throughout the city (at the time, they were known as planned *unit* developments). However, there are currently two areas within the city that the Unified Development Code *prohibits* planned developments ("PDs"): the Uptown Special Purpose District and the Medical District Overlay. In addition, three zoning districts within the University Overlay prohibits PDs. This provision was enacted in an effort to discourage variances from being requested in these areas, but on at least one occasion, it has resulted in a developer filing two corresponding applications: one for a subdivision to the Land Use Control Board and one for a variance to the Board of Adjustment rather than a combined application as a planned development to the City Council. See layout for Planters Row below, on the south side of Jefferson just east of Danny Thomas, which was processed by both the Land Use Control Board as Subdivision 14-01 and the Board of Adjustment as Docket No. BOA 13-57. The current prohibition of planned developments in Uptown and the Medical District and parts of the University District is discouraging innovative projects like this from being processed through the tool that the voters approved in 1974 for such projects, the planned development.



The proposed language below would eliminate the prohibition of planned developments in these two areas:

7.3.11: Any use not explicitly listed in the Zoning Matrix below is prohibited within the Uptown Special Purpose District. ~~Furthermore, no Planned Developments (Section 4.10) shall be allowed within the Uptown Special Purpose District.~~

8.2.2D: ~~No Planned Developments (Section 4.10) shall be allowed within the Medical Overlay District.~~

In addition, the use chart for the University Overlay use chart needs to be amended to allow PDs through the approval of Special Use Permits in the RU-1, RU-3 and CMUP-2 zoning districts. This will also involve the removal of Footnote 1 meant to address PDs approved in these zoning districts prior to the adoption of the University Overlay.

8.3.11:

PRINCIPAL USE	R6	RU-1	RU-3	CMU-1	CMU-2	CMP-2
Planned Development~~1~~	□	□	□	□	□	□

~~1. Planned Developments approved prior to the adoption of the University District Overlay (July 22, 2009) are not affected.~~

54. 8.2.7C: Missing words

The following minimum streetscape standards apply along a Commercial Frontage as designated in Sub-Section 8.2.5B (see Sub-Section 8.2.5C for related building envelope standards). Developments with no on-site parking between the building **and the** street may follow the requirements for Urban Frontage (see B).

55. 8.2.8E(1) and 8.3.10E(3): Pervious parking in the Medical and University Overlays

These two sections contain similar language in the Medical and University Overlays: that any parking over the minimum required spaces provided for a particular use be paved with a pervious material such as grasscrete or gravel, as opposed to the typical asphalt or concrete impervious surface. The purpose of this provision is presumably to discourage superfluous parking in parts of town where density is encouraged. According to a local engineer Michael Rogers, PE, Director of Land Development with Fisher Arnold, during his review of this matter associated with the construction of the Memphis Fire Department's new station at Washington and High in the Medical District Overlay, the typical sub-surface soil in that and the University Overlays are silt, clays and silty clays with low permeability and are therefore not conducive for achieving the implied benefits of pervious pavement. In addition, much of the Medical Overlay is near the old Gayoso Bayou culvert, which overflows during wet periods, especially when the Mississippi River is at high elevations. This makes the slow-percolation process inherent with pervious surfacing impractical since the ground in the area is soaked with groundwater due to the high water table. Finally, a portion of the Medical Overlay is also within the CBD zoning district, which contains no parking minimums. Taken together with Paragraph 8.2.8E(1) requiring all parking spaces over the minimum to be pervious, has been interpreted to mean that every parking space in the CBD zoning district within the Medical Overlay be pervious, an issue that would have had significant construction costs with the new fire station at Washington and High. The language below addresses this:

8.2.8E(1): Due to the high availability of public transportation in the Medical Overlay District area, any building, structure, or use may reduce the total number of required parking spaces specified in Chapter 4.5, Parking and Loading by up to 25 percent. Where off-street parking is provided, it shall comply with the geometric requirements of Chapter 4.5. ~~Where parking spaces beyond the required parking spaces set forth in Chapter 4.5 are provided in surface parking lots, such additional spaces shall be established using pervious materials such as turf block, grasscrete or similar surfaces as approved by the City Engineer.~~

8.3.10E(3): Where off street parking is provided, it shall comply with the geometric requirements of Chapter 4.5. ~~Where parking spaces beyond the required parking spaces set forth in Chapter 4.5 are provided in surface parking lots, such additional spaces shall be established using pervious materials such as turf block, grasscrete or similar surfaces as approved by the City Engineer.~~

56. 8.3.6D: Building height in the University District Overlay

The table in this section says that buildings along shopfront-designated streets may be 55 feet in height; however, it also contains a footnote to cross-reference the height map in Sec. 8.3.7, which contains a wide variety of allowable heights throughout the Overlay, ranging from 35 to 80 feet. Since the other frontage, urban-designated streets, contain no specified height limit and instead references the height map in Sec. 8.3.7, the same is proposed for shopfront-designated streets:

***~~55~~

Also, there are contradictions between this table and the graphics that follow, such as upper floor height and lot of widths. This proposal will also square the table and graphics of this Sub-Section.

57. 8.3.9: Streetscape standards in the University Overlay

This section contradicts Section 4.3.3, which allows two additional streetscape types along Shopfront frontages. This amendment will address this contradiction:

Streetscapes S-1~~,~~ & S-2**, S-3 & S-4** apply along Shopf**r**ont Frontages.

58. 8.3.10E(2): Misspelling

…Where fractional spaces result, the parking spaces required shall be construed to be the **next** ~~nest~~ highest whole number.

59. 8.4.5D, 9.22.10B and 9.22.10C (new section): Variances and similar applications

The Code generally discourages the need for a property owner to file two separate applications to sometimes two separate bodies for relief on a single project. However, the language of the three sections below can and have been interpreted to require such separate applications. The proposed language will allow projects that require both a zoning variance

and a special exception or both a variance and a conditional use permit to be processed as a variance, which holds a higher finding of fact as special exceptions and conditional use permits:

8.4.5D: Unlisted and Listed Standards: Any request for a deviation from a standard of the Unified Development Code not included in the Midtown District Overlay shall be reviewed by the Board of Adjustment in accordance with Chapter 9.22, Variances. Any request for a deviation from a standard included in the Midtown Overlay District not listed as an Administrative Deviation shall be reviewed **either** by the Land Use Control Board as a Special Exception, in accordance with Section 8.4.6, below**, or by the Board of Adjustment in accordance with Chapter 9.22, Variances**.

9.22.10 (section heading) Pending **and Similar** Applications

9.22.10B: **A variance may be requested for any deviation identified in this Code as a Special Exception.** ~~If a variance application also requires the approval of a special exception (see Chapter 9.14), the Board of Adjustment may consider the special exception as a variance request. Under such a circumstance where the request involves additional height, the Board of Adjustment may only grant the request for additional height if it makes a finding that the subject site exhibits extraordinary topographic conditions.~~

9.22.10C (new section): **If a variance application also requires the approval of a Conditional Use Permit (see Chapter 9.24), the Board of Adjustment may consider the Conditional Use Permit as a variance request.**

60. 8.4.8C(1)(b): Comma splice

Any development or portion of a development~~,~~ adjacent to a designated frontage on the Zoning Map shall comply with the standards established for the designated frontage type.

61. 8.4.8D and J: General frontage in the Midtown District Overlay

"General" frontage is not applied within the Midtown District Overlay; its name and inclusion in the overlay provisions created confusion as some interpret it to mean undesignated frontage. This proposal calls on the deletion of references of the General frontage in Sub-Sections 8.4.8D and J; if any future frontages in Midtown are designated to the equivalent of General frontage, that could be done through Section 3.10.3.

62. 8.5.2A and 8.5.2B: Repetitive sections:

~~A. All land fronting a designated Residential Corridor, for a depth of 200 feet, shall not be eligible for rezoning to a nonresidential district nor shall such land be eligible for a change in use from a residential use to a nonresidential use. Certain civic and institutional uses may be permitted through the special use process (see 9.6).~~

B. All land fronting the designated Residential Corridor, for a depth of 200 feet, shall not be eligible for rezoning to a mixed use or nonresidential district **nor** ~~or~~ shall such land be eligible for a change in use from a residential use to a nonresidential use. Certain civic and institutional uses may be permitted through the special use process (see 9.6).

63. 9.2.2: TRC review of ROW vacations

With ZTA 17-01, 9.1.8B was amended to allow the Planning Director (to be renamed the Zoning Administrator in 2020) discretion on which right-of-way vacations should be heard by the Technical Review Committee (the "TRC") since many are not technical in nature and involve paper streets. However, this change was not reflected in the Review Table of Sec. 9.2.2. This proposal will change the symbol for mandated review by the TRC, "R," in this table to the symbol for review at the discretion of the Planning Director, "Δ."

64. 9.3.2B and D: Neighborhood meetings

These two sections of the Code concern neighborhood meetings that are required for many zoning requests. One of the requirements of neighborhood meetings is to invite all neighborhood association officers as listed with the City's Office of Community Affairs. The proposed language below will include both those neighborhood associations registered with the Memphis Office of Community Affairs, as well as those on file with the Division of Planning and Development, which includes many neighborhood associations in unincorporated Shelby County.

In addition, these sections require that all neighborhood associations within 1500 feet of the subject property be invited to the neighborhood meeting. Since many neighborhood associations do not have defined boundaries and for those that do, there is not an easily accessible map that includes those boundaries, the following language is recommended to produce a more definitive list of invitees:

9.3.2B(1)… the officers of any neighborhood or business associations registered with the City of Memphis Office of Community Affairs **or on file with the Division of Planning and Development** whose **official mailing address shares the same zip code(s) as** ~~boundaries include properties within 1,500 feet of~~ the subject property…

9.3.2D: Any neighborhood or business association registered with the City of Memphis Office of Community Affairs **or on file with the Division of Planning and Development** whose **official mailing address shares the same zip code(s) as** ~~boundaries include properties within 1,500 feet of~~ the **subject property** ~~development area~~…

Finally, 9.3.2D mandates that any Community Impact Statement written by a neighborhood association shall be submitted to staff within five days of the Land Use Control Board meeting. Since the Board meets on Thursdays, this would allow a Community Impact Statement to be submitted on Saturday, which is after the staff reports are completed. It is recommended that a Community Impact Statement be submitted to the Board at any time before the meeting, included immediately before the meeting, which gives the neighborhood association more time to complete the report but also will prevent it from being incorporated into the staff report (which does not contain a Land Use Control Board recommendation since it is the report

presented to the Board):

> 9.3.2D:...Neighborhood or business associations who intend to file a CIS must submit said statement to the Land Use Control Board or governing bodies ~~no later than 5 days~~ prior to the scheduled hearing ~~date~~. **If provided prior to the publishing of the Land Use Control Board staff report, t**he CIS shall be included within the staff report in a prominent position alongside the ~~Land Use Control Board and~~ **Division** ~~Office~~ of Planning and Development recommendation~~s~~.

65. 9.3.4A: Public notice

In practice, notice is mailed to adjacent property owners for minor subdivisions to alert them of the hearing before the Technical Review Committee; however, the Public Hearing and Notification Table in Sub-Section 9.3.4A only requires mailed notice when a minor subdivision is appealed to the Land Use Control Board. This proposal would change this table to require mailed notice for Technical Review Committee meetings as is currently done. This involves changing the "M-AO" for "Minor Preliminary Plans" under the "Mailed" column to "M."

Also, the Landmarks Commission Bylaws (Section III(C)) state that a 150-foot radius is used for Major Certificates of Appropriateness; this proposal will also amend this table to reflect that practice with the insertion of a new Footnote 7.

Finally, the Notification Table currently requires newspaper notice for all Landmarks Commission Certificates of Appropriateness and Planned Developments and Special Use Permits where notice is requested on the latter two. This proposal would delete required newspaper notice for these items, which will result in newspaper notice purely for ordinance changes (text and map amendments). This will be in line with the Tennessee Code Annotated sections (TCA Secs. 13-7-401, et. seq.) that govern the Landmarks Commission's noticing requirements.

66. 9.6.11D(3)(c) and 9.6.11E(1): Amendments to approved Planned Development outline plans

The following language will address an internal issue for personnel at Planning and Development and closing attorneys alike: whether an entire Planned Development is amended if just one section if being amended. Some Planned Developments, such as Southwind, have dozens of phases and thousands of owners. To amend an entire Planned Development and give it a new case number when only one site is being amended proves cumbersome. The language below clearly outlines the process whereby a section of a Planned Development is amended.

> 9.6.11E(1): All outline ~~and final~~ plan amendments shall meet the standards set forth in Chapter 4.10, Planned Development. **Outline plan amendments shall be given a new case number and apply only to the site subject to the amendment. Areas of the original planned development not subject to the amendment shall retain the original case number.** The following modifications to approved outline and final plans shall be deemed amendments:

Also, Item 9.6.11D(3)(c) is missing a word:

9.6.11D(3)(c): 100 feet for final plans of eight acres but **less** than 20 acres; and

67. 9.6.15: Special Use Permit revocation process

This section of the Code allows the Memphis City Council or Shelby County Board of Commissioners to initiate the process to revoke a Special Use Permit of Planned Development that had been approved by each respective body. Based on recent revocation actions and attempted actions, the following language should aid in this process:

A. If any conditions of a special use permit, planned development or other requirements of this development code are violated, the governing bodies may revoke all or a portion of a special use permit or planned development.
B. Revocation may occur after an evidentiary hearing is conducted by the governing bodies. **The governing body may refer the matter to the Land Use Control Board for a recommendation on the revocation prior to its evidentiary hearing. All hearings associated with a revocation shall be open to the public with certified notice mailed to the owner of the property that is the subject of the special use permit or planned development. Mailed notice shall be in accordance with Paragraph 9.3.4D(1).**
C. A special use permit or planned development may be revoked upon a majority vote of the governing body approving the development.
D. Violation of a condition of approval shall be considered a violation of this development code and thereby subject to the provisions of Article 11, Enforcement, as well as this section.

68. 9.8.6B: Sign posting for street and alley closure extensions

This section of the Code, which addresses extensions to street and alley closure petitions that have already been approved by the Memphis City Council or Shelby County Board of Commissioners, mentions a 300-foot mailing requirement, which was earlier replaced in the Code for street and alley applications with a 500-foot mailing requirement. This proposal not only corrects this language, but adds that it and sign postings are only required for those time extensions where the allowable 3-year performance period of the original approval has expired. This is in line with similar time extension requests for planned developments, special use permits, etc.

Not less than 35 or more than 75 days after an application has been determined complete, the Land Use Control Board shall hold a public hearing and give notice in accordance with Section 9.3.4, Public Hearings and Notification. ~~For conversions and physical closures,~~ **Only those time extensions that have expired shall require any applicable** mailed notice ~~shall also be delivered~~ to ~~all~~ property owners within a **five** ~~three~~ hundred **(500)** ~~(300)~~ foot radius ~~of the street or alley closing~~ **or posting of signs under Section 9.3.4**.

69. 9.11.2C: Misspelling

> If streets have been improved, or partially improved, an application for right-of-way vacation in accordance with Chapter 9.8 shall also be **filed** ~~filled~~.

70. 9.19: Misspelling

> Certificates of occupancy are required to ensure ~~insure~~…

71. 9.22.1B: Reference to subdivision waivers

This section of the Code stipulates that the Board of Adjustment may not grant variances related to subdivisions. The primary purpose is to prevent an applicant filing a variance with the Board of Adjustment from the subdivision regulations to create a subdivision without filing a plat with the Land Use Control Board. It is also meant to prevent a variance from being filed on matters such as road width, offset, etc. that are covered through the subdivision review process. However, this section is worded to imply that the Board cannot grant variances from those sections of the Code referenced in Sub-Section 9.7.7F (which is currently mistakenly listed as Sub-Section 9.7.7*3*; a mistaken cross-reference that appears to have occurred with the Word document that holds the UDC during the adoption of ZTA 14-1). These include the Code's streetscape plates, which are often applied during site plan review and not through subdivision review. In other words, if a property owner is seeking alternate placement of street trees on a single property he or she may file a variance; going through the subdivision process would be inappropriate since the lot in question is already likely platted. The following amendment will clarify this:

> 9.22.1B: The Board of Adjustment shall have authority to vary the standards of this development code, except for those associated with **the creation of** subdivisions (see Sub-Section 9.7.7**F** ~~3~~ for subdivision waivers).

72. 9.23.1A, 9.23.1C(1), 9.23.2A and 9.2.2: Appeals

Any decision made by OPD and other departments interpreting provisions of the UDC are appealable to the Board of Adjustment, pursuant to the enabling acts passed by the Tennessee General Assembly that allows zoning in Memphis and Shelby County. However, for certain items, such as minor subdivisions and special use permit and planned development minor modifications, those appeals go to the Land Use Control Board pursuant to Section 9.2.2. The following language adds a reference to that section in Sub-Section 9.23.1A:

> 9.23.1A: An appeal by any person authorized by Section 9.2.2 to file an appeal and aggrieved by a final order, interpretation or decision of the **Zoning Administrator** ~~Planning Director~~ (see Item 1 above with regards to this amendment), Building Official or other administrator in regard to the provisions of this development code may be taken to the Board of Adjustment. However, an appeal of a minor preliminary plan**, as well as those other items articulated in Section 9.2.2,** may only be taken to the Land Use Control Board.

Paragraph 9.23.1C(1) of the Code provides parties five days to file said appeal, with the clock starting once the receiving party receives notification of the decision in question. This appears to be worded specifically for the applicant or property owner requesting to appeal an adverse action by OPD, but not other aggrieved parties such as neighboring property owners. For instance, if an administrative site plan is approved by OPD, only the owner and his or her agents are notified. Most often, neighboring property owners learn of the approval more than five days after the site plan has been approved. This following language provides a balance between the rights of the subject site property owner, who needs closure as soon as possible, and those of abutting property owners who seek to protest an item that presumably meets all of the provisions of the Code. The following language provides a maximum 14-day window to appeal. It also eliminates any list of the types of cases that may be appealed to the Land Use Control Board since it excludes at least two (for instance, minor modifications to Special Use Permits and Planned Developments); the proposal below will replace this list with a reference to Section 9.2.2, which outlines all of the types of cases that are appealed to the Board of Adjustment and which ones are appealed to the Land Use Control Board.

> 9.23.1C(1): An appeal of an administrative decision shall be filed with the Secretary of the Board of Adjustment or, if **directed by Section 9.2.2** ~~a special exception or minor preliminary plan~~, with the Secretary of the Land Use Control Board and with the aggrieved entity, within five days of receipt of the decision unless a different time frame is provided in one of the Chapters of this Article. **For non-applicants and other property owners who would not receive notice of an administrative decision under the provisions of this Code, an appeal shall be filed within five days of their receipt of the decision but under no circumstance more than 14 days after the date of the decision.**

Sub-Section 9.23.2A outlines who has the right to appeal a decision by the Land Use Control Board to the governing bodies. It currently excludes appeals of the Planning Director from the kinds of cases that may be appealed further to the City Council but does not include other exclusions provided for in Section 9.2.2, the appeal table. Similar to the proposal above, the list of items covered by this section will be replaced with a reference to Section 9.2.2:

> 9.23.2A: Right to Appeal. **Applicants and a**ny **other** individual appearing and providing vocal objection to, or submitting written comments on, a particular application at a meeting of the Land Use Control Board may appeal a decision of the Land Use Control Board, on said application, to the governing bodies**, provided the application type is outlined as appealable to the governing bodies in Section 9.2.2.** ~~except where the Land Use Control Board hears an appeal of the Planning Director. Applicants may also appeal decisions made by Land Use Control Board to the governing bodies.~~

9.23.2E(1): Any matter that is heard by the Land Use Control Board that would not otherwise be forwarded to the Memphis City Council or Shelby County Board of Commissioners for final consideration is appealable to these legislative bodies. Paragraph 9.23.2E(1) contains the mailed notice for the public hearing of such an appeal; it requires mailed notice to the applicant, appellant, all parties who spoke at the meeting and members of the Technical Review Committee. This proposal would eliminate members of the Technical Review Committee since these individuals are staff members of various City and County agencies who are not notified of any hearing of the City Council and County Commission but rather

attend as a function of their job duties. It will also replace members who spoke on the matter with all parties who received public notice for the initial public hearing before the Land Use Control Board; this will result in many more people receiving mailed notice.

> 9.23.2E(1): The appeal shall be scheduled for legislative consideration. Notice shall be sent to the applicant, the appellant **and all parties who received mailed notice for the Land Use Control Board meeting under Sub-Section 9.3.4A**, ~~any individual appearing or who submitted written comments at the Land Use Control Board meeting, and members of the Technical Review Committee,~~ not less than ten days or more than 35 days in advance of the scheduled hearing.

Finally, Section 9.2.2 contains the parties that may appeal decisions of the Planning Director (as well as the Building Official and City and County Engineers): those property owners within 1000 feet of the subject property. This needs to also include the subject property owner, as a decision may be adverse to his or her interests:

> 9.2.2 (footnote A**): Only **the subject property owner and** those property owners within 1000 feet of the subject property, as measured from property line to property line, may appeal decisions of the Zoning Administrator ~~Planning Director~~ (this amendment is covered above), Building Official or City or County Engineer.

73. 10.5.1: Nonconforming lots and tracts

This section of the Code addresses lots that were legal at the time they were created by deed or by subdivision plat, but have since become illegal due to changes to the zoning code. Typically, these lots are too small or too narrow under the current regulations. This section states that these lots may be built upon under certain scenarios, including the requirement that they be owned "separately and individually" from other lots. The purpose of this section is likely aimed at lots created by deed, rather than plat, to avoid the situation in which two deeded lots are subsequently joined together by separate deed and the current owner would like to avail him or herself to the former deed but not the latter. The language below would specify that deeded lots must be owned separately and individually from surrounding lots but not platted lots, since the latter were specifically approved by the government (the Land Use Control Board since 1976; the Planning Commission from 1922 to 1976 and the City or County legislative body before 1922).

> 10.5.1: In any district in which single-family detached dwellings are a permitted use, notwithstanding the regulations imposed by any other provisions of this development code, a single-family detached dwelling which complies with the restrictions of Section 10.5.2 below may be erected on a nonconforming lot that is not less than 25 feet in width, and which **h**as less than the prescribed minimum tract or lot area, width and depth, or any of them**.**~~; and~~

A. **For nonconforming tracts or lots created by deed, the following additional restrictions shall apply:**

1. **The tract or lot i**s shown by a recorded ~~plan or~~ deed to have been a lot of record or tract owned separately and individually from adjoining tracts of land at a time when the creation of a lot or tract of such size, depth and width at such location would not have been prohibited by any zoning or other ordinance; and
2. **The tract or lot h**as remained in separate and individual ownership from adjoining tracts of land continuously since March 1, 1989.

74. 11.1: Injunctive relief

Article 11 provides for remedies to violating the provisions of the Code, including the ability of the Environmental Court to impose a $50 fee for each day a violation exists. Chapters 11.3 and 11.4, which provide remedies specifically to violations to the tree and sign ordinances of the Code, also provide injunctive relief. In other words, a person found in violation of the tree and sign code may be ordered to stop work and cease some or all utilization of the subject property by the Environmental Court. Curiously, injunctive relief is not provided for violations for other sections of the Code. The language below addresses this:

> 11.1A: Any person, firm or corporation violating any of the provisions of this development code shall, upon conviction thereof, be fined not more than $50.00. Each day's continuance of a violation shall be considered a separate offense. In addition to the party violating this development code, any other person who may have knowingly assisted in the commission of any such violation shall be guilty of a separate offense. **The City and/or County may also seek an injunction or other order of restraint or abatement that requires the correction of the violation.**

75. 12.3.1: Definitions of "Boarding House" and "Rooming House"

Boarding houses are defined as those dwellings that have more than four unrelated individuals residing together; rooming houses are defined as those dwellings with four or fewer individuals residing together for periods of less than 30 days. To aid in the citation of these uses in Environmental Court, the following language is proposed for both definitions, which provide quantifiable evidence of the existence of these uses:

> BOARDING HOUSE: A building where lodging, with or without meals, is provided for compensation for five or more persons, who are not transients, by prearrangement for definite periods, provided that no convalescent or chronic care is provided. **Evidence that a property is being utilized as a rooming house may include, but is not limited to, the following: keyed locks on interior doors, number of mailboxes or mail receptacles, excessive parking and signs indicating individual rooms for rent.**

> ROOMING HOUSE: A dwelling where lodging is provided for compensation for at least one, but not more than four, transients at one time, by prearrangement for a period of less than 30 days. **Evidence that a property is being utilized as a rooming house may include, but is not limited to, the following: keyed locks on interior doors, number**

of mailboxes or mail receptacles, excessive parking and signs indicating individual rooms for rent.

76. 12.3.1 and 2.6.2G(3): Other definitions

Commercial parking is currently defined as any parking that serves as nonresidential use. However, there are some parking lots, such as church parking lots, that may be approved through the Conditional Use Permit process, conflicting with the regulation requiring commercial parking through the Special Use Permit process. This clarification to the definition of "commercial parking" below will correct this inconsistency:

> COMMERCIAL PARKING: Any surface or structured parking that serves an off-site nonresidential use(s)**, except for those nonresidential use(s) permitted in residential districts such as places of worship and schools**.

The change above will also necessitate a clarification to the cross-reference included in Paragraph 2.6.2G(3) with regards to off-site parking for places of worship if the parking is within 300 feet of the place of worship: this needs to be to Item 4.5.2C(2)(e) and not specifically to one of its sub-items, 4.5.2C(2)(e)(2).

Repetition:

> DROP-IN CHILD CARE CENTER: ~~DROP-IN CHILD CARE CENTER:~~

The very end of the definition of "Frontage" says that private drives may provide required frontage for lots if they are approved in subdivisions or planned developments by the Land Use Control Board. Since the City Council or County Board of Commissioners actually approve planned developments, the following language is proposed:

> FRONTAGE:…Access via private access easements across adjacent properties to a public street shall not constitute frontage except for subdivisions and planned developments with private drives as approved by the Land Use Control Board **or governing body**.

Also, the definitions of "Group Shelter," "Nursing Home," "Residential Home for the Elderly" and "Transitional Home" state that the Planning Director (hereafter known as the Zoning Administrator) may approve supportive living facilities or personal care homes that are not licensed. The practice of the Office of Planning and Development (hereafter known as the Office of Zoning Administration) is to discourage any "by right" homes of this kind that are not license, much less approve them. The following amendments will codify this practice:

> GROUP SHELTER: A residence, operated by a public or private agency, which may provide a program of services in addition to room and board to persons on a voluntary basis under continuous protective supervision. This definition does not include supportive living facilities or personal care homes for the elderly licensed by any duly authorized governmental agencies~~, or in other instances, approved by the Planning Director (who shall provide any such applicant with written notice of his determination),~~ and thereby allowed by right within all residential zones in accordance with the definition of "family" hereunder.

NURSING HOME: An establishment which provides full time convalescent or chronic care, or both, for five or more individuals who are not related by blood or marriage to the operator or who, by reason of advanced age, chronic illness or infirmity, and unable to care for themselves and required skilled medical staff. This definition does not include supportive living facilities or personal care homes for the elderly licensed by any duly authorized governmental agencies~~, or in other instances, approved by the Planning Director (who shall provide any such applicant with written notice of his determination),~~ and thereby allowed by right within all residential zones in accordance with the definition of “family” hereunder.

RESIDENTIAL HOME FOR THE ELDERLY: A building where at least two ambulatory persons, of at least 55 years of age, reside and are provided with food and custodial care for compensation, but not including nursing homes or similar institutions devoted primarily to the care of the chronically ill or the incurable. This definition does not include supportive living facilities or personal care homes for the elderly licensed by any duly authorized governmental agencies~~, or in other instances, approved by the Planning Director (who shall provide any such applicant with written notice of his determination),~~ and thereby allowed by right within all residential zones in accordance with the definition of “family” hereunder.

TRANSITIONAL HOME: A residence used for the purposes of rehabilitating persons from correctional facilities, mental institutions, and alcoholic and drug treatment centers and operated by a public or private agency duly authorized and licensed by the state, which agency houses individuals being cared for by the agency and deemed by the agency to be capable of living and functioning in a community and which provides continuous professional guidance. This definition does not include supportive living facilities or personal care homes for the elderly licensed by any duly authorized governmental agency ~~or in other instances, approved by the director of the Memphis and Shelby County Office of Planning and Development (who shall provide any such applicant with written notice of his or her determination),~~ and thereby allowed by right within all residential zones in accordance with the definition of “family” hereunder.